notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on January 12, 1994 (60 F.R. 2986).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–6736 Filed 3–17–95; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Microelectronics and Computer Technology Corporation

Notice is hereby given that, on November 17, 1994, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 14 U.S.C. 4301 *et seq.* (''the Act''), Microelectronics and Computer Technology Corporation (''MCC'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the changes are as follows: Abelstik Laboratories; Amoco Production Company; EDEN International Corporation; Itasca Systems, Inc.; and Occidental Chemical Corporation have not renewed their Associate memberships with MCC.

No other changes have been made in either membership or planned activity of the group research project. Membership remains open and MCC intends to file additional written notification disclosing all changes in membership.

On December 21, 1984, MCC filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on January 17, 1985 (50 FR 2633).

The last notification was filed with the Department on July 15, 1994. A **Federal Register** notice pursuant to Section 6(b) of the Act has not yet been published.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–6739 Filed 3–17–95; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—The Smart Valley Commercenet Consortium, Inc.

Notice is hereby given that, on January 18, 1995, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), The Smart Valley CommerceNet Consortium, Inc. (the ''Consortium'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing certain changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the identities of the additional members at the sponsor level are: Ameritech, Chicago, IL; Delphi Internet Services Corporation, Cambridge, MA; InterNex Information Services, Menlo Park, CA; Lawrence Livermore Laboratory, Livermore, CA; MasterCard International, New York, NY; Social Security Administration, Baltimore, MD; Solectron, Milpitas, CA; The General Electric Company, Rockville, MD; and Trusted Information Systems, Mountain View, CA. The following organizations have joined the Consortium as associate members: Arroyo Seco/Fore Play Golf, South Pasadena, CA; Boomerang Information Services, Palo Alto, CA; CONNECT, Inc., Cupertino, CA; CyberCash, Inc., Vienna, VA; CyberMark, Inc., Washington, D.C.; Equifax, Inc., Atlanta, GA; National Association of Purchasing Management Silicon Valley, Inc., San Jose, CA; National Housewares Manufacturers Association, Rosemont, IL; O'Reilly & Associates, Sebastopol, CA; Process Software Corporation, Framingham, MA; Sybase, Emeryville, CA; Telequip, Hollis, NH; UC Berkeley Center for Information Technology and Management (CITM), Berkeley, CA; and Wave Systems Corporation, New York, NY. In error, in the October 18, 1994, notice, Financial Services Technology Consortium, New York, NY was listed as a sponsor. It is actually a member at the associate level.

No other changes have been made in either the membership or planned activities of the Consortium. Membership remains open, and the Consortium intends to file additional written notifications disclosing all changes in membership.

On June 13, 1994 the Consortium filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on August 31, 1994 (59 Fed. Reg. 45012).

The last notification was filed with the Department on October 19, 1994. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on January 12, 1995 (60 F. R. 2986).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–6738 Filed 3–17–95; 8:45]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application No. D–09358, et al.]

Proposed Exemptions; NCNB Real Estate Fund, et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restriction of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or request for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** Notice. Comments and request for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210. Attention: Application No. stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits

Administration, U.S. Department of Labor, Room N–5507, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

NCNB Real Estate Fund (the Fund), NationsBank Pension Plan, NationsBank Retirement Savings Plan

Located in Charlotte, North Carolina
[Exemption App. Nos. D–09358, D–09359 and D–09360, respectively]

Proposed Exemption

Based on the facts and representations set forth in the application, the Department and the Service are considering granting the following requested exemptions under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, August 10, 1990) and Revenue Procedure 75–26, 1975–1 C.B. 722.

Section I: Covered Transactions

1. If the exemption is granted, the restrictions of sections 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the proposed sale (the Sale) of units in the Fund (Units) by plans participating in the Fund (the Plans) pursuant to an Option election made available by NationsBank of North Carolina, N.A. (the Bank), to a standby trust (the Standby Trust) established and maintained by NationsBank, Corporation (the Holding Company), a party in interest with respect to the Plans. This proposed exemption is subject to the conditions set forth in Section II.

2. If the exemption is granted, the restrictions of sections 406(a)(1)(D), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (D) and (E) of the Code shall not apply to any decision by the Bank to sell a property held by the Fund to a third party, and jointly owned by the Plans and the Holding Company, provided that: each Plan receives no less than fair market value for its interest in the property; and the Independent Fiduciary approves the reasonableness and propriety of the sale of the property.

Section II: Conditions

(a) The properties held by the Fund (the Properties) shall be appraised by an independent and qualified appraiser within twelve months and updated within fifteen days before the Settlement Valuation Date.

(b) The Plans selling Units pursuant to the Options will receive a price equal to the value of each Unit sold based on the value of the Fund as of the Settlement Valuation Date (the Unit Purchase Price) plus the Interest Amount which will be calculated by the Bank and reviewed and approved by the Independent Fiduciary who has been retained to represent the interests of the Plans with respect to the Sale and the subsequent activities of the Fund related to the Fund's liquidation.

(c) Plans selling Units pursuant to Options 1 or 2 will receive the Unit Purchase Price plus the Interest Amount for each Unit sold on the settlement date (Settlement Date) which will be no more than 120 days after the Settlement Valuation Date.

(d) If Options 2 or 4 are elected, the Plans involved will receive the final payment, if any, within sixty days after, the two year anniversary of the Settlement Valuation date for Option 2, or the date of complete liquidation of the Fund for Option 4.

(e) Prior to the Settlement Valuation Date, the Bank will provide each Plan with written information regarding the terms of the Sale. Such information includes, but is not limited to:

(i) notice that each Plan will be entitled to elect one or more Options which will permit the Plan to sell all or part of its Units to the Stand-by Trust, or to continue to hold all or part of its Units in the Fund until the Fund's liquidation is complete, provided that if multiple Options are elected they must be uniform with respect to the grant, or failure to grant, a Release to the Bank,

(ii) a description of each Option,

(iii) the date by which a Plan must elect an Option (Option Election Date), and

(iv) forms for electing the Options.

(f) Except for Plans with respect to which the Bank or any of its Affiliates is an employer, the decision whether to authorize the Independent Fiduciary to make an Option election on behalf of the Plan will be made by a fiduciary independent of the Bank and its Affiliates and the Independent Fiduciary.

(g) The Bank and any Affiliate which is an employer with respect to a Plan will authorize the Independent Fiduciary to choose among all of the Options.

(h) A Plan's Option election will be made by a Plan fiduciary who is independent of the Bank and its Affiliates or by the Independent Fiduciary.

(i) The Independent Fiduciary's duties and responsibilities include, but are not limited to:

(1) Reviewing and determining whether to approve the appraisals of the Properties;

(2) Ordering a new appraisal in cases in which it has determined not to approve an existing appraisal;

(3) Reviewing and approving all of the disclosures, written explanations, and forms furnished to the Plans by the Bank;

(4) Furnishing information to an independent Plan fiduciary, in advance of any date by which the independent Plan fiduciary is required to respond in order to authorize the Independent Fiduciary to make a decision on behalf of the Plan. Such information includes, but is not limited to:

(i) the Unit Purchase Price;

(ii) a description and explanation of the Options;

(iii) dates by which the Plans must act in order to make Option elections and authorize the Independent Fiduciary to make Option elections on behalf of the Plan;

(iv) information summarizing: the effect of failing to authorize the Independent Fiduciary to make Option elections on behalf of the Plan, the effect

of failing to make an Option election after informing the Independent Fiduciary that the independent Plan fiduciary would make the decision to select an Option election, and the availability and effect of the different Option election authorizations which the Plan may provide to the Independent Fiduciary, in language calculated to be reasonably understood by the average independent Plan fiduciary responsible for making decisions on behalf of a Plan with regard to Units of the Fund held by the Plan;

(4) making Option elections on behalf of any Plan if: (a) The Bank or any of its Affiliates is an employer with respect to the Plan; (b) the independent Plan fiduciary authorizes the Independent Fiduciary to make an Option elections on behalf of that Plan; or (c) the independent Plan fiduciary does not reserve the right to make an Option election and fails to make an Option election prior to the Option Election Date;

(5) providing guidance regarding the four Options, to those independent Plan fiduciaries who wish to make their own Option elections;

(6) reviewing and determining whether to approve the Unit Purchase Price as of the Settlement Valuation Date, and the value of a Unit in the Fund as of two years from the Sale of the Units by the Plans to the Standby Trust (for purposes of determining the amount which is due to those Plans electing Option 2);

(7) reviewing and determining whether to approve the Interest Amount payable to any Plan which elected either Option 1 or 2;

(8) exercising its veto authority with regard to the proposed Unit Purchase Price, Interest Amount, or value of Fund Units pursuant to Option 2, which it has determined not to approve;

(9) monitoring the Bank's efforts to dispose of the Properties during the liquidation of the Fund;

(10) approving the reasonableness and propriety of sales of the Properties during the period in which the Standby Trust owns units in the Fund.

(j) The Independent Fiduciary may be removed by a majority vote of the Plans ''for cause.''

(i) The term ''for cause'' shall mean that there must be sufficient and reasonable grounds for removal and the grounds must be related to the ability and fitness of the Independent Fiduciary to perform his required duties.

(ii) Each Plan's vote for or against removal will be proportionate to it's ownership interest in the Fund exclusive of Units owned by the Standby Trust.

(k) The Bank and the Holding Company will be bound by the decisions and determinations made by the Independent Fiduciary.

(l) The Bank will continue its efforts, with due diligence to liquidate the Fund.

(m) Any distributions made by the Fund will be made pro rata, in cash.

(n) Any payment made pursuant to any of the Options will be made in cash.

(o) The Independent Fiduciary is responsible for monitoring compliance with the terms and conditions of the exemption at all times.

Section II. Definitions

For purposes of this exemption:

(a) Affiliate of the Bank includes:

(1) Any person directly or indirectly through one or more intermediaries controlling, controlled by, or under common control with the Bank;

(2) Any officer, director or employee of the Bank, or of a person described in paragraph (a)(1) of Section II; and

(3) Any partnership in which the Bank is a partner;

(b) Control means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(c) Affiliate of the Independent Fiduciary includes:

(1) Any person directly or indirectly through one or more intermediaries controlling, controlled by, or under common control with the Independent Fiduciary;

(2) Any officer or director of the Independent Fiduciary;

(3) Any partner in the Independent Fiduciary, or any other related individual, with the authority to make, or who actually makes, fiduciary decisions which are within the scope of the Independent Fiduciary's duties and responsibilities under this exemption, or who holds a five percent (5%) or greater interest in the Independent Fiduciary;

(d) Independent Fiduciary means a person who:

(1) Is not an Affiliate of the Bank as defined in section II(a);

(2) does not have an ownership interest in the Bank or its Affiliates;

(3) is not a corporation or partnership in which the Bank or any of its Affiliates has an ownership interest;

(4) is not a fiduciary with respect to any of the Plans other than in connection with the transactions described in this exemption;

(5) has acknowledged in writing acceptance of fiduciary responsibility;

(6) is either:

(i) A business organization which has at least (5) years of experience with respect to commercial real estate investments or other relevant experience;

(ii) a committee comprised of three to five individuals who each have at least five (5) years of experience with respect to commercial real estate investments or other relevant experience; or

(iii) a committee comprised both of a business organization or organizations and individuals having the qualifications described in paragraphs (d)(1) through (6)(ii) above.

(7) An individual acting in a fiduciary capacity with respect to the Fund on behalf of, and at the direction of, an Independent Fiduciary meeting the conditions of paragraphs (d)(1) through (6)(iii) above shall be considered an Independent Fiduciary.

For purposes of this definition, no organization or individual may serve as an Independent Fiduciary for the Fund for any fiscal year, if the gross income received by such organization or individual (or by any partnership or corporation of which such organization or individual is an officer, director, or ten percent (10%) or more partner or shareholder) from the Bank, or any Affiliate, for that fiscal year exceeds five percent (5%) of its or his annual gross income from all sources for the prior fiscal year. If such organization or individual has no income for the prior fiscal year, the 5% limitation shall be applied with reference to the fiscal year in which such organization or individual serves as an independent fiduciary. The income limitation will include income received for services rendered to the Plans and the Fund as Independent Fiduciary, as described in this exemption.

In addition, no organization or individual who is an Independent Fiduciary or an Affiliate of such Independent Fiduciary, and no partnership or corporation of which such Independent Fiduciary is an officer, director, or ten percent (10%) or more partner or shareholder with the authority to cause such corporation or partnership to engage in the following transactions, or who exercises such authority in conjunction with others, may:

(1) Acquire any property from, sell any property to, or borrow any funds from, the Bank, its Affiliates, or any collective investment vehicle or separate trust maintained or advised by the Bank or its Affiliates, during the period that such organization or individual serves as an Independent fiduciary and continuing for a period of six (6) months after such organization or

individual ceases to be an Independent Fiduciary; or

(2) Negotiate any such transaction, described above in paragraph (1) above during the period that such organization or individual serves as Independent Fiduciary.

No Plan fiduciary or sponsor of a Plan or a designee of such Plan fiduciary, sponsor or Plan may serve as the Independent Fiduciary with respect to the Fund.

(e) Option(s) means the following:

Option 1: A Plan will accelerate the liquidation of its investment in the Fund by selling each of its Units subject to this Option to the Standby Trust for an amount equal to the Unit Purchase Price plus the Interest Amount. A Plan electing this Option will reserve all rights it may have with respect to the Fund, the Bank and other appropriate persons. However, with respect to a participant directed account Plan, the Plan sponsor and an authorized independent Plan fiduciary will provide a Release to the Fund, the Bank and other appropriate persons without any affect on the rights of the participants or beneficiaries regarding the matters covered by the Release.

Option 2: A Plan will accelerate the liquidation of its investment in the Fund by selling each of its Units subject to this Option to the Standby Trust for an amount equal to the Unit Purchase Price plus the Interest Amount. In addition, the Bank will pay promptly following the second anniversary of the Settlement Valuation Date, an amount equal to the excess, if any, of (A) the sum of (1) the value that the Unit would have had at the Valuation Date two years after the Settlement Valuation Date if such Unit had not been sold, plus (2) the amount of any distributions made with respect to such Unit during such two year period, over (B) the Unit Purchase Price plus the Interest Amount. The Bank will pay Litigation Expenses to the Plan, if any. Under this Option, a Plan will release the Fund, the Bank and other appropriate persons with respect to all matters relating to the investment in the Fund occurring prior to the Sale.

Option 3: A Plan will continue its investment in the Fund through the end of the liquidation process. Under this Option, a Plan reserves all rights with respect to the Fund, the Bank and all other appropriate persons. However, with respect to a participant directed account Plan, the Plan sponsor and an authorized independent Plan fiduciary will provide a Release to the Fund, the Bank and other appropriate persons without any affect on the rights of the participants or beneficiaries regarding the matters covered by the Release.

Option 4: A Plan will continue its investment in the Fund through the end of the liquidation process. For a Plan electing this Option, the Bank will agree to pay promptly following the completion of the liquidation of the Fund, with respect to each Unit subject to this Option, an amount equal to the excess, if any, of the (i) the value of a Unit on September 28, 1990 over (ii) the value of all distributions made to the Plan with respect to such Unit since September 29, 1990 and during the liquidation of the Fund. The Bank will also pay Litigation Expenses to the Plan, if any. Plans electing this Option will release the Fund, the Bank and other appropriate persons with respect to all matters related to the investment in the Fund occurring prior to the Sale.

(f) Unit Purchase Price means the amount which is calculated by dividing the value of all of the assets of the Fund, as reviewed and approved by the Independent Fiduciary, by the total number of units in the Fund.

(g) Interest Amount means the amount approved by the Independent Fiduciary, equal to the net income earned on a Fund unit during the period commencing on the Settlement Valuation Date and ending on the day immediately preceding the Settlement Date, exclusive of realized or unrealized appreciation or depreciation.

(h) Settlement Valuation Date means the date on which the value of the Fund will be determined by the Bank in order to establish the Unit Purchase Price in connection with the Sale. The Settlement Valuation Date will be the last business day of the calendar month following the calendar month in which final prospective approval will be granted by the Office of the Comptroller of the Currency subsequent to a final grant of this proposed exemption and approval of the transaction which is the subject of this proposed exemption by the Federal Reserve Board.

(i) Litigation Expenses means the out-of-pocket expenses of litigation instituted before November 24, 1992 by or on behalf of a Plan against the Bank or the Fund with respect to the Plan's investment in the Fund exclusive of any expense of litigation with respect to a case which has proceeded to trial, or with respect to which there is a judgment against the Bank or the Fund, prior to the Option Election Date, plus interest. The total amount of Litigation Expenses, the rate of interest and the period for which interest is paid must be agreed to in writing between the Bank and the Plan prior to the Plan's election of Options 2 or 4. However, in the event there has never been a written settlement agreement specifying the amount of Litigation Expenses, prior to the date on which the Plan elects Option 2 or 4, Litigation Expenses will be the amounts requested by the Plan, unless such expenses are unreasonable.

(j) Option Election Date means the date as communicated to the Plans, at least Ninety (90) days subsequent to the Settlement Valuation Date and at least sixty (60) days subsequent to the completion of the mailing of the general post Settlement Valuation Date disclosure to all of the Plans by the Independent Fiduciary, on or prior to which a Plan must submit its Option election forms to the Bank.

(k) Settlement Date means the date, no more than 120 days after the Settlement Valuation Date, on which the transfer of the Units to the Standby Trust and delivery of Releases to the Bank will be effected pursuant to the Options.

(l) Release means a release covering activities and transactions in connection with the Fund prior to, and during, the Fund's liquidation, but in no case shall be effective on or after the Settlement Date. In this regard, the Release does not cover activities and transactions necessary to comply with the exemption, the conditions of the exemption, and the material representations made in connection therewith, which form the basis for the Department's decision to propose an exemption for the Sale and subsequent dispositions of properties owned by the Fund.

Summary of Facts and Representatives

1. The applicants are the Bank and The Holding Company. The Holding Company is a North Carolina corporation registered under the Bank Holding Company Act of 1956, as amended. The Holding Company maintains its principal office in Charlotte, North Carolina. The Holding Company represents that it is the largest banking company in the south and southwest and the fourth largest in the United States with banking subsidiaries providing full-service banking centers in nine states: Florida, Georgia, Kentucky, Maryland, North Carolina, South Carolina, Tennessee, Texas, Virginia and the District of Columbia. As of December 31, 1992, total assets of the Holding Company and its subsidiaries were approximately $118 billion.

2. The Bank is a wholly-owned subsidiary of the Holding Company with its principal offices in Charlotte, North Carolina. As of September 30, 1993 the Bank had total assets of approximately $20 billion. On February 28, 1974, the Bank established the Fund

as a common trust fund exempt from federal income taxation under section 584 of the Internal Revenue Code, and serves as trustee of the Fund. The Fund is a vehicle for the collective investment of tax-qualified retirement plans with respect to which the Bank or its affiliates are trustees. The Fund is divided into units of equal value (Units). The proportionate interest of each Plan is represented by the number of Units owned by that Plan.

3. As of March 1992, approximately 589 defined benefit plans and defined contribution plans held Units in the Fund. Some of these Plans include participant directed accounts and may elect to meet the requirements of section 404(c) of the Act (Section 404(c) Plans). In relevant part, section 404(c) of the Act and the regulations promulgated thereunder at 57 FR 46906 (October 13, 1992) provide that where a participant or beneficiary of a Section 404(c) Plan in fact exercises control over the assets in his or her account, then (1) the participant or beneficiary shall not be deemed to be a fiduciary by reason of his or her exercise of control; and (2) no person who is otherwise a fiduciary shall be liable under the fiduciary responsibility provisions of the Act for any loss, or by reason of any breach which results from such participant's or beneficiary's exercise of control.

Because section 404(c) of the Act applies only to the provisions of Part 4 of Title I, there is no provision in the Code corresponding to section 404(c). Thus, there is no statutory exemption from the excise taxes imposed under section 4975 of the Code with respect to prohibited transactions involving a Section 404(c) Plan. In this regard, the Department notes that the authority to grant administrative exemptions for section 404(c) transactions remains with the Treasury Department pursuant to Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978). Accordingly, the Department has no authority to provide exemptive relief with respect to a transaction that results from a participant's or beneficiary's exercise of control within the meaning of section 404(c) and applicable regulations. In this regard, the Department has solicited the views of the Service with respect to the transactions described herein as they relate to Section 404(c) Plans. The Service has reviewed this notice of proposed exemption and concurs with the exemptive relief provided. Accordingly, the Service has determined that it will join the Department in publishing this pendency notice in the **Federal Register**.[1]

4. The assets of the Fund have been primarily invested in real estate and real estate related securities. According to the Bank, the Fund experienced excellent returns through the second quarter of 1990. However, due to market conditions and investor uncertainty, the Fund experienced increased withdrawal requests and decreased new investment commitments during the third quarter of 1990. As a result, the Bank suspended admissions to and withdrawals from the Fund, and no Unit transactions have been effected since June 30, 1990.

After considering several alternative courses of action, the Bank determined in July of 1991 that it was in the best interests of the Plans to terminate the Fund. Accordingly, the Fund is in the process of liquidating pursuant to a Plan of liquidation which provides for the orderly disposition of the assets of the Fund and periodic partial liquidating distributions to Plans on a pro rata basis until the Fund has been completely liquidated. As of December 31, 1993, the value of the Fund was $172,907,000. As part of its plan of liquidation, during the year ending on December 31, 1992, the Fund distributed assets worth $222,000,000. The Bank anticipates that the liquidation will take several more years.

6. Due to the inability to liquidate their investments in the Fund, many Plans have experienced administrative difficulties. Certain Plans have made claims and filed lawsuits against the Bank alleging breach of fiduciary duty by the Bank in its management of the Fund.[2] Consequently, some Plans have expressed a desire to accelerate the liquidation of their investment in the Fund by selling all or part of their Units for cash equal to the current value of the Plan's Units, and in lieu of receiving proceeds during the liquidation process.

7. In order to accommodate the Plans and to respond to those claims against the Bank and the Holding Company, the Bank proposes the Sale whereby the Holding Company would establish the Stand-by Trust and contribute funds in a sufficient amount to enable the Stand-by Trust to acquire the Units held by the Plans desiring to accelerate liquidation of their Fund investment.[3] The trustee of the Stand-by Trust will be NationsBank of Tennessee, N.A., a national banking association organized under the laws of the United States with its principal office located in Nashville, Tennessee. NationsBank of Tennessee, N.A., as trustee of the Standby Trust, is to execute Sale transactions pursuant to the Option election forms timely filed. The Grantor of the trust is the Holding Company which has agreed to provide assets sufficient for the Stand-by Trust to meet its obligations.

8. Following the establishment of the Stand-by Trust, each Plan will be offered the opportunity to select from four Options which will permit each Plan to elect to sell all or part of its Units in the Fund to the Stand-by Trust, or to continue to hold all or part of its Units in the Fund. Options 1 and 2 involve selling the Fund units to the Standby Trust. Options 3 and 4 involve continuation of a Plan's investment in the Fund.

Options 2 and 4 always involve the provision of a Release[4] whereby the Plan sponsor, an authorized independent Plan fiduciary and the

[1] Neither the Department nor the Service is expressing an opinion as to whether the investment decision made by a participant of a Plan which holds an interest in the Fund would be subject to relief provided by section 404(c) of the Act or applicable regulations.

[2] On December 14, 1992, the Bank entered into an agreement settling claims relating to the Fund with Teamsters Joint Council No. 83 of Virginia Pension Fund. In addition, NationsBank of Florida, N.A., an affiliate of the Bank and wholly owned subsidiary of the Holding Company, entered into a settlement agreement with Kenny Nachwalter Seymour & Crichlow, P.A. Employees' Trust and its trustees. The terms of the settlement agreements contain the same terms and conditions provided in this notice of proposed exemption, and are contingent upon the granting of the exemption.

[3] The Department notes that the exemptive relief being granted herein extends only to those transactions described above. Also, the Applicants represent that the Bank is a national bank which is subject to the authority of the Office of the Comptroller of the Currency (the OCC). The OCC has informed the Department that a transaction that may be prohibited under the Act may also be a violation of the National Bank Act or constitute an unsafe or unsound banking practice. The proposed exemption does not address the safety and soundness or the legality of the transaction under the National Bank Act. Accordingly, the Bank should satisfy itself that the transaction does not violate the National Bank Act or constitute an unsafe or unsound banking practice.

In this regard, the applicants represent that they are currently obtaining any and all regulatory approvals from applicable governmental agencies, in order to effect the Sale, including approval from the Office of the Comptroller of the Currency, the Internal Revenue Service and the Federal Reserve Board.

[4] The Bank represents that there are only four litigants which potentially will be eligible to receive Litigation Expenses. In this regard, only four lawsuits were filed (on a consolidated basis) before November 24, 1992. Three of the four lawsuits have been settled conditioned on the opportunity to sell units to the Standby Trust. Each settlement agreement provides that payment of Litigation Expenses will be made with respect to the election of Option 2 or Option 4 by, or on behalf of, the Plan within ten days after the Bank and the Independent Fiduciary determine that all payments under the relevant Option have been paid. In this regard, the Department expects that a settlement of the fourth law suit would provide terms at least as favorable to the Plan as the arrangement described in this proposed exemption.

participants and beneficiaries release the Fund, the Bank and other appropriate persons with respect to matters relating to the Fund which occurred prior to the Settlement Date in exchange for certain consideration provided by the Bank.[5]

No release is involved in Options 1 or 3 except with respect to participant directed account Plans. In this regard, in connection with Options 1 and 3, the Plan sponsor and an authorized independent Plan fiduciary will provide a Release to the Fund, the Bank and other appropriate persons, without any affect on the rights of participants or beneficiaries with respect to the matters covered by the Release.

A Plan may elect one Option with respect to its entire investment in the Fund. Alternatively, a Plan may elect one Option with respect to a portion of that Plan's investment in the Fund and another Option with respect to the remainder. However, if a Plan elects multiple Options, it must be a combination of either Options 1 and 3 or Options 2 and 4.

The Independent Fiduciary will provide each Plan with the information necessary to evaluate the four Options. Plans which desire to liquidate all or part of their investment in the Fund by selling their Units to the Stand-by Trust may elect a combination of the four Options by submitting an Option election form prior to the Option Election Date. For those Plan sponsors of participant directed Plans who wish to allow the participants and beneficiaries of their Plans to make their own Option elections, the Plan sponsor will establish four sub trusts each of which will accommodate the participants' and beneficiaries' election of the different Options.[6] Each participant's election of an Option will then be represented by an interest in the sub trust designated for that Option. If a Plan sponsor does not elect to have participants and beneficiaries make Option elections, then the Plan will be treated as any other Plan, and Option elections will be made by the independent Plan fiduciary or the Independent Fiduciary.

The Bank will be directed with respect to each Plan's election of one or more Options by an independent Plan fiduciary or by the Independent Fiduciary who will represent the Plans interest for purposes of the Sale.

9. In order to determine the value of the Units which will be sold pursuant to the Option elections, the Unit Purchase Price, the assets of the Fund will be appraised by independent and qualified appraisers selected by the Bank. Such appraisals will be completed within twelve months of and updated within fifteen days of the Sale. The Independent Fiduciary will review and approve the professional qualifications of the appraisers and their technical analyses and methodologies employed. As part of this approval process, the Independent Fiduciary will determine whether such appraisals are reasonable and adequate to establish the fair market value of the Properties. Additionally, the Independent Fiduciary will review and consider any capital improvement programs, environmental issues, preemptive liens, debt obligations and accrued expenses which may impact the value of the Properties. In the event that the Independent Fiduciary finds that any appraisal is deficient or unsuitable, the Independent Fiduciary has the authority to request the revision of such appraisal or the commission of a new appraisal. These appraisals will then be used by the Bank to calculate the overall value of the Fund.

The Bank will calculate the Unit Purchase Price based on the value of the Fund on the Settlement Valuation Date. The Unit Purchase Price will be approved by the Independent Fiduciary. Such approval will be accomplished by reviewing the appraisals of the assets of the Fund and the procedures and methodologies to be employed by the Bank in determining the Unit Purchase Price. Further, if the Independent Fiduciary believes that the Unit Purchase Price proposed by the Bank is not accurate, the Independent Fiduciary has the authority to order the Bank to recalculate the Unit Purchase Price. In addition, the Independent Fiduciary will review and approve the Bank's calculation of the Interest Amount payable to those Plans which elected Options 1 or 2. The Independent Fiduciary will also participate in the quarterly meetings held by the Bank in order to remain current on issues and developments relating to the Fund.

10. Arthur Andersen, LLP (Arthur Andersen) has been retained to serve as the Independent Fiduciary on behalf of the Plans with respect to the Sale. Arthur Andersen represents that it has extensive experience in the business of commercial real estate consulting, appraisal and related activities. Arthur Andersen is an experienced counselor to institutional owners of real estate and has negotiated terms and conditions of various real estate transactions. Specifically, Arthur Andersen has served as independent fiduciary on behalf of numerous clients. In addition, Arthur Andersen acknowledges that in acting as the Independent Fiduciary, it is a fiduciary within the meaning of section 3(21) of the Act.

11. In its capacity as the Independent Fiduciary, Arthur Andersen will review all disclosures made by the Bank to the Plans in connection with the Sale. In addition, Arthur Andersen will distribute to all Plans written disclosures providing general information regarding the proposed transaction, the circumstances under which the Independent Fiduciary will make an Option election for the Plan, and among which Options the Independent Fiduciary may elect for the Plan under various circumstances. Arthur Andersen will also provide general information to all Plans regarding the various factors that each Plan may wish to consider in deciding whether to authorize Arthur Andersen to select from the four Options. This information will include the cost/benefit considerations relating to pursuing an action against the Bank if the independent Plan fiduciary does not release the Bank, and the relative attractiveness of the additional features of Options 2 and 4. In addition, Arthur Andersen will send a survey/profile to all Plans to determine the type of Plan, degree of participant involvement in investment elections, Plan liquidity needs and the preferences of the independent Plan fiduciary. However, an independent Plan fiduciary that decides to make its own decision and

[5] The Department notes that the selection of the Options made by the independent Plan fiduciaries or the Independent Fiduciary is governed by the fiduciary responsibility provisions of Part 4, Subtitle B, Title I of the Act. Section 404 of the Act requires, in part, that a fiduciary of a plan act prudently, solely in the interest of and for the exclusive purpose of providing benefits to participants and beneficiaries. In this regard, the Department notes that in order to act prudently, a fiduciary must consider, among other factors, the risk and potential return of the alternative Options for its Plan.

Further, the Department is expressing no opinion, herein, on the decision by a fiduciary in electing an Option involving the Release. In this regard, the Department notes that the election by a plan fiduciary of an Option involving the Release does not preclude the Department from taking any action with respect to past transactions involving the Fund.

Finally, the Department notes that a determination by a Plan fiduciary to settle litigation and enter into an agreement which provides for the release of the Bank and the Fund is subject to the fiduciary responsiblity requirements of section 404 of the Act.

[6] The Department expects that each participant or beneficiary of a participant directed account Plan will be treated similarly with respect to the availability of the opportunity to elect Options, and those participants and beneficiaries who are responsible for making Option elections will receive information that is adequate to make an informed decision with regard to the Options.

declines to receive the survey/profile will not receive it.

12. Arthur Andersen will make Option elections for (1) Any Plan with respect to which the Bank or its Affiliates is an employer; (2) Plans that have authorized Arthur Andersen to make an Option election on their behalf; or (3) Any Plan which does not reserve the right to make an Option election and fails to make an Option election prior to the Option Election Date.

If the Plan reserves the right to make its own Option election and subsequently fails to make an Option election by the Option Election Date, the Plan will be deemed to have elected Option 3. If the Plan does not reserve the right to make its own Option election and the Plan fails to make: a sufficiently broad authorization; any authorization at all; or fails to complete the profile survey, Arthur Andersen will elect only between Options 1 and 3 for the Plan. However, Arthur Andersen will choose among all four Options if the independent Plan fiduciary completes and returns timely all required parts of the profile/survey and the related authorization form expressly authorizing Arthur Andersen to choose among all four Options. The Bank represents that it will authorize Arthur Andersen to choose among all four Options for Plans with respect to which the Bank or any of its Affiliates is an employer.

Arthur Andersen will review all surveys returned by the Plans for completeness and contact Plan fiduciaries regarding any unclear or incomplete information. In the event that the Plan fiduciaries do not respond to the surveys, Arthur Andersen will make the Option election based on the information available, and will notify each Plan of the Option election which it has selected for the Plan and the basis for such election in writing.

With respect to those independent Plan fiduciaries who notify Arthur Andersen that they will be making their own Option elections, Arthur Andersen is prepared to counsel any Plan fiduciary regarding the election process.

Finally, as the Independent Fiduciary, Arthur Andersen's duties will also include monitoring property sales and disposition activities during the liquidation of the Fund.

13. The Bank represents that it will provide securities disclosure forms and option elections forms, reviewed and approved by Arthur Andersen, to the Plan within ten days after the date on which final approval for the Sale will be granted by the Office of the Comptroller of the Currency which will be subsequent to a final grant of this proposed exemption and approval of the transactions covered by this proposed exemption by the Federal Reserve Board (the Initiation Date).

The Bank represents that the Settlement Valuation Date will be the last business day of the calendar month following the calendar month in which the Initiation Date occurs.

The Bank states that the Independent Fiduciary will mail a notice of right to make election, forms, supplemental disclosures and profile/surveys within thirty (30) days subsequent to the Settlement Valuation Date. The Plans will have at least thirty (30) days subsequent to the mailing of the Option Election Information to return the profile/survey to the Independent Fiduciary. The Plans will have at least sixty (60) days after the date on which the Option Election Information is mailed by the Independent Fiduciary in order to make their own Option elections.

The Bank states that the date on which the Plans will receive in cash the Unit Purchase Price plus the Interest Amount for their units in the Fund will be no more than 120 days after the Settlement Valuation Date.

14. The Standby Trustee will be obligated to acquire the Units in accordance with the Option Election Forms, and sales will be effected only pursuant to the Option Election Forms filed with the Bank on or prior to the Option Election Date. A Plan may rescind an Option election at any time prior to the Option Election Date.

15. The Bank agrees to be bound by the decisions and determinations made by Arthur Andersen, as the Independent Fiduciary. In the event that any action or inaction by the Bank or by the Holding Company with respect to the liquidation of the Fund or the Stand-by Trust is determined by the Independent Fiduciary to impede or conflict with any action or inaction required of the Independent Fiduciary in order to carry out and comply with the terms and provisions of this proposed transaction, the Independent Fiduciary shall so notify the Bank and demand that the Bank cease and desist from such action or take such action as is requested by the Independent Fiduciary.

16. In summary, it is represented that the proposed transaction will meet the statutory criteria for an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code because: (a) The Properties will be appraised by an independent and qualified appraiser; (b) The Plans selling Units pursuant to the Options will receive a price at least equal to the Unit Purchase Price plus the Interest Amount; (c) Prior to the Sale, the Plans will receive written information regarding the terms of the Sale; (d) An Independent Fiduciary has been retained to represent the Plans' interests with respect to the Sale and ongoing disposition of the Properties in the Fund; (e) The duties of the Independent Fiduciary shall include: reviewing and approving the appraisals of the Properties; monitoring the sales of, and disposition activities with respect to, the Properties during the Fund's liquidation; making Option elections on behalf of any Plan if the Bank or its affiliates have sole investment discretion with respect to that Plan, the independent plan Fiduciary authorizes the Independent Fiduciary to make an Option election on behalf of that Plan, the independent Plan fiduciary does not indicate whether the Independent Fiduciary is authorized to make an Option election on behalf of the Plan, or the Bank or any Affiliate is an employer with respect to the Plan; (f) The Bank and the Holding Company will be bound by the decisions and determinations made by the Independent Fiduciary; and (g) The Bank will continue its efforts to liquidate the Fund.

FURTHER INFORMATION CONTACT: Eric Berger of the Department, telephone (202) 219–8971. (This is not a toll-free number.)

The First National Bank of Boston and Its Affiliates (Collectively, the Bank)

Located in Boston, Massachusetts
[App. No. D–09682]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990).

Section I—Exemption for Receipt of Fees

If the exemption is granted, the restrictions of sections 406(a) and 406(b) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (F) of the Code, shall not apply as of April 1, 1994 to: (1) the receipt by the Bank of fees from the 1784 Funds (the Funds), investment companies registered under the Investment Company Act of 1940 (the 1940 Act), for acting as an investment adviser to the Funds in connection with the investment by plans for which the Bank serves as a fiduciary (the Client Plans) in shares of the Funds; and (2) the receipt and retention of fees by the

Bank from the Funds for acting as custodian and accountant to the Funds as well as for any other services to the Funds which are not investment advisory services (i.e. ''secondary services'' as defined in Section III(h) below) in connection with the investment by the Client Plans in shares of the Funds, provided that the following conditions and the General Conditions of Section II below are met:

(a) No sales commissions are paid by the Client Plans in connection with the purchase or sale of shares of the Funds and no redemption fees are paid in connection with the sale of shares by the Client Plans to the Funds.

(b) The price paid or received by a Client Plan for shares in a Fund is the net asset value per share at the time of the transaction, as defined in Section III(e), and is the same price which would have been paid or received for the shares by any other investor at that time.

(c) Neither the Bank nor an affiliate, including any officer or director of the Bank, purchases or sells shares of the Funds to any Client Plan.

(d) Each Client Plan receives a credit, through a cash rebate, of such Plan's proportionate share of all fees charged to the Funds by the Bank for investment advisory services, including any investment advisory fees paid by the Bank to third party sub-advisors, no later than one business day after the receipt of such fees by the Bank. The crediting of all investment advisory fees to the Client Plans by the Bank is audited by an independent accounting firm on at least an annual basis to verify the proper crediting of the fees to each Client Plan.

(e) The combined total of all fees received by the Bank for the provision of services to a Client Plan, and in connection with the provision of services to the Funds in which the Client Plan may invest, are not in excess of ''reasonable compensation'' within the meaning of section 408(b)(2) of the Act.[7]

[7] In addition, the Department notes that Section 404(a) of the Act requires, among other things, that a fiduciary of a plan act prudently, solely in the interest of the plan's participants and beneficiaries, and for the exclusive purpose of providing benefits to participants and beneficiaries when making investment decisions on behalf of a plan. Thus, the Department believes that the Bank should ensure, prior to any investments made by a Client Plan for which it acts as a trustee or investment manager, that all fees paid by the Funds, including fees paid to parties unrelated to the Bank and its affiliates, are reasonable. In this regard, the Department is providing no opinion as to whether the total fees to be paid by a Client Plan to the Bank, its affiliates, and third parties under the arrangements described herein would be either reasonable or in the best interests of the participants and beneficiaries of the Client Plans.

(f) The Bank does not receive any fees payable pursuant to Rule 12b–1 under the 1940 Act in connection with the transactions.

(g) The Client Plans are not employee benefit plans sponsored or maintained by the Bank.

(h) A second fiduciary acting for the Client Plan which is independent of and unrelated to the Bank (the Second Fiduciary) receives, in advance of any investment by the Client Plan in a Fund, full and detailed written disclosure of information concerning the Funds, including but not limited to:

(1) A current prospectus for each Fund in which a Client Plan is considering investing;

(2) A statement describing the fees for investment advisory or similar services, any secondary services as defined in Section III(h), and all other fees to be charged to or paid by the Client Plan and by the Funds, including the nature and extent of any differential between the rates of such fees;

(3) The reasons why the Bank may consider such investment to be appropriate for the Client Plan;

(4) A statement describing whether there are any limitations applicable to the Bank with respect to which assets of a Client Plan may be invested in the Funds, and if so, the nature of such limitations; and

(5) Upon request of the Second Fiduciary, a copy of the proposed exemption and/or a copy of the final exemption, if granted, once such documents are published in the **Federal Register**.

(i) On the basis of the information described above in paragraph (h) of Section I, the Second Fiduciary authorizes in writing the investment of assets of the Client Plan in each particular Fund, the fees to be paid by such Fund to the Bank, and the cash rebate to the Client Plan of fees received by the Bank from the Funds for investment advisory services.

(j) All authorizations made by a Second Fiduciary regarding investments in a Fund and the fees paid to the Bank are subject to an annual reauthorization wherein any such prior authorization referred to in paragraph (i) of Section I shall be terminable at will by the Client Plan, without penalty to the Client Plan, upon receipt by the Bank of written notice of termination. A form expressly providing an election to terminate the authorization described in paragraph (i) above (the Termination Form) with instructions on the use of the form must be supplied to the Second Fiduciary no less than annually. The instructions for the Termination Form must include the following information:

(1) The authorization is terminable at will by the Client Plan, without penalty to the Client Plan, upon receipt by the Bank of written notice from the Second Fiduciary; and

(2) Failure to return the Termination Form will result in continued authorization of the Bank to engage in the transactions described in paragraph (i) of Section I on behalf of the Client Plan.

(k) The Second Fiduciary of each Client Plan invested in a particular Fund receives full written disclosure, in a statement separate from the Fund prospectus, of any proposed increases in the rates of fees charged by the Bank to the Funds for secondary services at least 30 days prior to the effective date of such increase, accompanied by a copy of the Termination Form, and receives full written disclosure in a Fund prospectus or otherwise of any increases in the rates of fees charged by the Bank to the Funds for investment advisory services even though such fees will be rebated as required by paragraph (d) of Section I above.

(l) In the event that the Bank provides an additional secondary service to a Fund for which a fee is charged or there is an increase in the amount of fees paid by the Funds to the Bank for any secondary services resulting from a decrease in the number or kind of services performed by the Bank for such fees in connection with a previously authorized secondary service, the Bank will, at least thirty days in advance of the implementation of such additional service or fee increase, provide written notice to the Second Fiduciary explaining the nature and the amount of the additional service for which a fee will be charged or the nature and amount of the increase in fees of the affected Fund. Such notice shall be accompanied by the Termination Form, as defined in Section III(i) below. However, if the Termination Form has been provided to the Second Fiduciary pursuant to this paragraph or paragraph (k) above, then the Termination Form need not be provided again for an annual reauthorization pursuant to paragraph (j) above unless at least six months has elapsed since the form was provided in connection with the fee increase.

(m) On an annual basis, the Bank provides the Second Fiduciary of a Client Plan investing in the Funds with:

(1) A copy of the current prospectus for the Funds and, upon such fiduciary's request, a copy of the Statement of Additional Information for such Funds which contains a description of all fees paid by the Funds to the Bank;

(2) A copy of the annual financial disclosure report prepared by the Bank which includes information about the Fund portfolios as well as audit findings of an independent auditor within 60 days of the preparation of the report; and

(3) Oral or written responses to inquiries of the Second Fiduciary as they arise.

(n) All dealings between the Client Plans and the Funds are on a basis no less favorable to the Client Plans than dealings with other shareholders of the Funds.

Section II—General Conditions

(a) The Bank maintains for a period of six years the records necessary to enable the persons described below in paragraph (b) of Section II to determine whether the conditions of this exemption have been met, except that (1) a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control the Bank, the records are lost or destroyed prior to the end of the six-year period, and (2) no party in interest other than the Bank shall be subject to the civil penalty that may be assessed under section 502(i) of the Act or to the taxes imposed by section 4975(a) and (b) of the Code if the records are not maintained or are not available for examination as required by paragraph (b) below.

(b)(1) Except as provided in paragraph (b)(2) and notwithstanding any provisions of section 504(a)(2) and (b) of the Act, the records referred to in paragraph (a) of Section II are unconditionally available at their customary location for examination during normal business hours by—

(i) Any duly authorized employee or representative of the Department or the Internal Revenue Service,

(ii) Any fiduciary of the Client Plans who has authority to acquire or dispose of shares of the Funds owned by the Client Plans, or any duly authorized employee or representative of such fiduciary, and

(iii) Any participant or beneficiary of the Client Plans or duly authorized employee or representative of such participant or beneficiary;

(2) None of the persons described in paragraph (b)(1) (ii) and (iii) shall be authorized to examine trade secrets of the Bank, or commercial or financial information which is privileged or confidential.

Section III—Definitions

For purposes of this proposed exemption:

(a) The term ''Bank'' means the First National Bank of Boston and any affiliate thereof as defined below in paragraph (b) of Section III.

(b) An ''affiliate'' of a person includes:

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the person;

(2) Any officer, director, employee, relative, or partner in any such person; and

(3) Any corporation or partnership of which such person is an officer, director, partner, or employee.

(c) The term ''control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(d) The term ''Fund'' or ''Funds'' shall include the 1784 Funds, Inc., or any other diversified open-end investment company registered under the 1940 Act for which the Bank serves as an investment adviser and may also serve as a custodian, Fund accountant, transfer agent or provide some other ''secondary service'' (as defined below in paragraph (h) of this Section) which has been approved by such Funds.

(e) The term ''net asset value'' means the amount for purposes of pricing all purchases and sales calculated by dividing the value of all securities, determined by a method as set forth in the Fund's prospectus and statement of additional information, and other assets belonging to the Fund or portfolio of the Fund, less the liabilities charged to each such portfolio or Fund, by the number of outstanding shares.

(f) The term ''relative'' means a ''relative'' as that term is defined in section 3(15) of the Act (or a ''member of the family'' as that term is defined in section 4975(e)(6) of the Code), or a brother, a sister, or a spouse of a brother or a sister.

(g) The term ''Second Fiduciary'' means a fiduciary of a Client Plan who is independent of and unrelated to the Bank. For purposes of this exemption, the Second Fiduciary will not be deemed to be independent of and unrelated to the Bank if:

(1) Such fiduciary directly or indirectly controls, is controlled by, or is under common control with the Bank;

(2) Such fiduciary, or any officer, director, partner, employee, or relative of the fiduciary is an officer, director, partner, employee or affiliate of the Bank (or is a relative of such persons);

(3) Such fiduciary directly or indirectly receives any compensation or other consideration for his or her own personal account in connection with any transaction described in this exemption.

If an officer, director, partner, affiliate or employee of the Bank (or relative of such persons), is a director of such Second Fiduciary, and if he or she abstains from participation in (i) the choice of the Client Plan's investment adviser, (ii) the approval of any such purchase or sale between the Client Plan and the Funds, and (iii) the approval of any change in fees charged to or paid by the Client Plan in connection with any of the transactions described in Sections I and II above, then paragraph (g)(2) of Section III shall not apply.

(h) The term ''secondary service'' means a service other than an investment management, investment advisory, or similar service, which is provided by the Bank to the Funds. However, for purposes of this exemption, the term ''secondary service'' will not include any brokerage services provided to the Funds by the Bank for the execution of securities transactions engaged in by the Funds.

(i) The term ''Termination Form'' means the form supplied to the Second Fiduciary which expressly provides an election to the Second Fiduciary to terminate on behalf of a Client Plan the authorization described in paragraph (j) of Section II. The Termination Form shall be used at will by the Second Fiduciary to terminate an authorization without penalty to the Client Plan and to notify the Bank in writing to effect a termination by selling the shares of the Funds held by the Client Plan requesting such termination within one business day following receipt by the Bank of the form; provided that if, due to circumstances beyond the control of the Bank, the sale cannot be executed within one business day, the Bank shall have one additional business day to complete such sale.

EFFECTIVE DATE: If the proposed exemption is granted, the exemption will be effective April 1, 1994.

Summary of Facts and Representations

1. The Bank is a national banking association with its principal offices located at 100 Federal Street, Boston, Massachusetts, and is a subsidiary of Bank of Boston Corporation, a registered bank holding company. The Bank and various affiliates (referred to herein as ''the Bank''),[8] serve as trustee, directed trustee, investment manager, or custodian for approximately 800

[8] The Bank's current affiliates include: Rhode Island Hospital Trust National Bank; Bank of Boston, Connecticut; Casco Northern Bank, N.A.; Bank of Boston, Florida, N.A.; South Shore Bank; Multibank West; and Mechanics Bank.

employee benefit plans. As of April 1, 1994, the Bank had total assets under management of approximately $1.3 billion.

The Bank represents that its status as a fiduciary with investment discretion for a Client Plan arises out of its relationship as a trustee or investment manager for such Plan, but does not result from the rendering of any investment advice to a Plan fiduciary that has investment discretion for the Client Plan. As a custodian or directed trustee of a Client Plan, the Bank has custody of Plan assets, collects all income, performs bookkeeping and accounting services, generates periodic statements of account activity and other reports, and makes payments or distributions from the account as directed. However, the Bank has no duty as custodian or directed trustee to review investments or make recommendations, acting only as directed by an authorized Second Fiduciary.

The Client Plans include various pension, profit sharing, and stock bonus plans as well as retirement plans for self-employed individuals (i.e., Keogh plans), and individual retirement accounts (IRAs). The Bank, in its capacity as a fiduciary of the Client Plans, may exercise investment discretion for all or a portion of the assets of such Client Plans.

2. The Bank invests assets of Client Plans for which it acts as a fiduciary in shares of the Funds in instances where the Bank provides investment advisory and other services to the Funds. The Client Plans' pro rata share of fees paid by the Funds to the Bank for investment advisory services are rebated to all Client Plans, subject to the conditions of the proposed exemption, with respect to the assets of the Client Plans involved in such Fund investments. All investments in the Funds on behalf of the Client Plans are made by the Bank pursuant to an initial written authorization, and an annual reauthorization (as discussed below), of the investment by an independent Plan fiduciary (i.e., the Second Fiduciary). The Bank invests assets of a Client Plan in any of the Funds for which it has received prior written authorization for such investment from the Second Fiduciary during the period that such authorization is effective.

3. The Funds are a Massachusetts business trust organized on February 5, 1993, as an open-end, diversified management investment company registered under the 1940 Act. The Funds consist of twelve separate series of funds or investment portfolios with combined assets of approximately $897 million. Each share of each Fund represents an undivided, proportionate interest in the assets of that Fund. The current Funds are: (i) The 1784 Growth and Income Fund; (ii) The 1784 Asset Allocation Fund; (iii) The 1784 U.S. Government Medium-Term Income Fund; (iv) The 1784 Tax-Exempt Medium-Term Income Fund; (v) The 1784 Massachusetts Tax-Exempt Income Fund; (vi) The 1784 U.S. Treasury Money Market Fund; (vii) The 1784 Institutional U.S. Treasury Money Market Fund; (viii) The 1784 Tax-Free Money Market Fund; (ix) The 1784 Short-Term Income Fund; (x) The 1784 Income Fund; (xi) The Connecticut Tax-Exempt Income Fund; and (xii) The 1784 Rhode Island Tax-Exempt Income Fund.[9] The Bank states that shares of the Funds are offered to the Bank's trust customers, including the Client Plans, under terms and conditions which are at least as favorable to such customers as the terms and conditions offered to other customers of the Bank.

Additional Funds are in the process of registration and other series of Funds may be established in the future. The Bank intends to offer such Funds to the Client Plans, if deemed appropriate by the Second Fiduciary, as a means of obtaining an interest in a diversified portfolio of debt or equity investments consistent with the investment policies and objectives of the Client Plans.

The Bank believes that there are material advantages to the Client Plans from the use of the Funds. The Funds are valued on a daily basis, in contrast to certain collective investment funds maintained by the Bank which are valued monthly. The daily valuation permits (i) immediate investment of Client Plan contributions in various types of investments; (ii) greater flexibility in transferring assets from one type of investment to another; and (iii) daily redemption of investments for purposes of making distributions under the Client Plan. In addition, information concerning the investment performance of the Funds is available in newspapers of general circulation which allows Client Plan fiduciaries to monitor the investment performance of such assets on a daily basis rather than monthly.

All investments of Client Plan assets in the Funds will occur either through the direct purchase of shares of the Funds for a Client Plan by the Bank, the transfer by the Bank of Client Plan assets from one Fund to another Fund, or a daily automated sweep of uninvested cash of a Client Plan by the Bank into one or more Funds previously designated by the Client Plan for sweeping such cash. Any such investments for the Client Plans will be made pursuant to the Second Fiduciary's prior written authorization and annual reauthorization to the Bank.

4. No sales commissions or redemption fees are charged in connection with the purchase or sale of shares of the Funds. However, the Bank states that the Funds may pay a distribution fee to the Funds' distributor, provided that such distributor is unrelated to the Bank and the Client Plans. Thus, the Bank does not and will not receive fees payable pursuant to Rule 12b–1 in connection with transactions involving any shares of the Funds. The current distributor for the Funds is SEI Financial Services Company (the Distributor), a wholly-owned subsidiary of SEI Corporation (SEI). According to the distribution plan adopted by the Funds pursuant to Rule 12b–1 under the 1940 Act, the Distributor receives a distribution fee equal to an annual rate of 0.25% of each of the Funds' average daily net assets. The distribution fee is calculated daily and paid monthly. For all of the current Funds, the distribution fees have been waived by the Distributor since the formation of the Funds.

SEI Financial Management Corporation, a wholly-owned subsidiary of SEI, also serves as the administrator, dividend disbursing agent, shareholder servicing agent, and transfer agent for the current Funds. The Bank states that SEI and its subsidiaries are unrelated to the Bank and its affiliates.[10]

5. The Bank serves as the investment advisor for the Funds and charges the Funds for this service in accordance with investment advisory agreements (the Agreements) between the Bank and each Fund. The Bank is currently the sole investment adviser to the Funds' existing portfolios and presently contemplates no change for such portfolios. However, the Bank states that it may utilize third party sub-advisers in the future to enhance the investment

[9] Since the Client Plans generally are not subject to federal or state income taxes and do not need to seek tax-free income, the Bank does not anticipate that the Client Plans will invest in The 1784 Tax-Exempt Medium-Term Income Fund, The 1784 Massachusetts Tax-Exempt Income Fund, The 1784 Tax-Free Money Market Fund, The Connecticut Tax-Exempt Income Fund, The 1784 Rhode Island Tax- Exempt Income Fund or any other tax-exempt Fund.

[10] With respect to any fees paid by the Funds to parties unrelated to the Bank and its affiliates, the Department notes that the Bank, as a trustee or investment manager for a Client Plan's assets that are invested in the Funds, has a fiduciary duty to ensure that the fees indirectly paid by a plan to third parties are reasonable. The Department notes further that the Bank should ensure that services performed by the Bank or an affiliate for a Fund are not duplicative of any similar services performed by third parties.

alternatives and the investment advisory services available to the Funds for certain new portfolios. The Agreements allow the Bank to receive monthly investment advisory fees based on a percentage of the average daily net assets of each of the Funds. The Agreements and the fees received by the Bank are approved by the Board of Directors of the Funds (the Funds' Directors), in accordance with the applicable provisions of the 1940 Act. The Bank also serves as the custodian and accountant for the Funds for which it is entitled to receive additional fees. Any changes in the fees received by the Bank from the Funds are approved by the Funds' Directors. All of the Funds' Directors are independent of the Bank.

The Bank states that while it may be engaged by the Funds in the future to perform additional secondary services, it will not provide brokerage services to the Funds. Therefore, all securities transactions for a Fund's portfolio will be executed by broker-dealers unrelated to the Bank and will not generate commissions or other fees to the Bank.

6. The Bank represents that it has designed a fee structure (the Fee Structure) which is at least as advantageous to the Client Plans as an offset or credit arrangement, similar to that described in Prohibited Transaction Exemption 77–4 (PTE 77–4, 42 FR 18732, April 8, 1977), whereby investment advisory fees paid by the Funds to the Bank would be offset against fees paid directly to the Bank by the Client Plans.[11]

Under the Fee Structure, the Bank charges its standard fees to the Client Plans for serving as either a trustee, directed trustee, investment manager, or custodian.[12] All fees are billed on a quarterly basis. The annual charges for a Client Plan account are individually negotiated with the Bank based on the Bank's standard fee schedules. The Bank provides services to the Client Plans for which it acts as a trustee with investment discretion, including sweep services for uninvested cash balances in such Plans, under a bundled or single fee arrangement which is calculated as a percentage of the market value of the Plan assets under management. Thus, in such instances, there are no separate charges for the provision of particular services to the Client Plans. However, for Client Plans where investment decisions are directed by a Second Fiduciary, a separate charge is assessed for particular services where the Second Fiduciary specifically agrees to have the Bank provide such services to the Client Plan. With respect to sweep services, the Bank represents that such services are generally provided at no additional charge and, in any event, are provided only if approved by a Second Fiduciary for the Client Plan after disclosure of the services to be provided.[13] The Bank states that in some cases fees charged by the Bank to a Client Plan are paid by the Client Plan sponsor rather than by the Client Plan.

The Bank charges the Funds for its services to the Funds as investment adviser, in accordance with the Agreements between the Bank and the Funds. Under the Agreements, the Bank charges fees at a different rate for each Fund, computed based on the average daily net assets for the respective Fund. The fee differentials among the Funds result from the particular level of services rendered by the Bank to the Funds.

The investment advisory and other fees paid by each of the existing Funds are accrued on a daily basis and billed by the Bank to the Funds at the beginning of the month following the month in which the fees accrued. The applicant states that any additional Funds will follow the same monthly billing arrangement.

At the beginning of each month (pursuant to the terms of the applicable Agreements) and in no event more than one business day following the receipt of such fees by the Bank, the Bank rebates to each Client Plan directly with cash such Plan's pro rata share of all investment advisory fees charged by the Bank to the Funds (the Rebate Program). The Bank represents that each Client Plan's rebate of such investment advisory fees will include any investment advisory fees paid by the Bank to third party sub-advisers.

The Bank retains fees received from the Funds for custody and shareholder services and will retain additional fees received in the future for other secondary services. The Bank states that such secondary services are distinct from the services provided by the Bank as trustee to a Client Plan. Trustee services rendered at the Plan-level include maintaining custody of the assets of the Client Plan (including the Fund shares, but not the assets underlying the Fund shares), processing benefit payments, maintaining participant accounts, valuing plan assets, conducting non-discrimination testing, preparing Forms 5500 and other required filings, and producing statements and reports regarding overall plan and individual participant holdings. These trustee services are necessary regardless of whether the Client Plan's assets are invested in the Funds. Thus, the Bank represents that its proposed receipt of fees for both secondary services at the Fund-level and trustee services at the Plan-level would not involve the receipt of ''double fees'' for duplicative services to the Client Plans because a Fund is charged for custody and other services relative to the individual securities owned by the Fund, while a Client Plan is charged for the maintenance of Plan accounts reflecting ownership of the Fund shares and other assets.[14]

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[11] PTE 77–4, in pertinent part, permits the purchase and sale by an employee benefit plan of shares of a registered, open-end investment company when a fiduciary with respect to the plan is also the investment adviser for the investment company, provided that, among other things, the plan does not pay an investment management, investment advisory or similar fee with respect to the plan assets invested in such shares for the entire period of such investment. Section II(c) of PTE 77–4 states that this condition does not preclude the payment of investment advisory fees by the investment company under the terms of an investment advisory agreement adopted in accordance with section 15 of the 1940 Act. Section II(c) states further that this condition does not preclude payment of an investment advisory fee by the plan based on total plan assets from which a credit has been subtracted representing the plan's pro rata share of investment advisory fees paid by the investment company.

[12] The applicant represents that all fees paid by Client Plans directly to the Bank for services performed by the Bank are exempt from the prohibited transaction provisions of the Act by reason of section 408(b)(2) of the Act and the regulations thereunder (see 29 CFR 2550.408b–2). The Department notes that to the extent there are prohibited transactions under the Act as a result of services provided by the Bank directly to the Client Plans which are not covered by section 408(b)(2), no relief is being proposed herein for such transactions.

[13] See DOL Letter dated August 1, 1986 to Robert S. Plotkin, Assistant Director, Division of Banking Supervision and Regulation, Board of Governors of the Federal Reserve System, stating the Department's views regarding the application of the prohibited transaction provisions of the Act to sweep services provided to plans by fiduciary banks and the potential applicability of certain statutory exemptions as described therein.

[14] In this regard, the Department notes that the combined total of all fees received by the Bank directly and indirectly from the Client Plans for the provision of services to the Plans and/or to the Funds should not be in excess of ''reasonable compensation'' within the meaning of section 408(b)(2) of the Act.

In addition, the fact that certain transactions and fee arrangements are the subject of an administrative exemption does not relieve a Client Plan fiduciary from the general fiduciary responsibility provisions of section 404 of the Act. Thus, the Department cautions the fiduciaries of the Client Plans investing in the Funds that they have an ongoing duty under section 404 of the Act to monitor the services provided to the Client Plans to assure that the fees paid by the Client Plans for such services are reasonable in relation to the value of the services provided. Such responsibilities would include determinations that the services provided are not duplicative and that the fees are reasonable in light of the level of services provided.

Finally, the Department notes that the Bank, as a trustee and investment manager for a Client Plan in connection with the decision to invest Client

The Bank states that the Rebate Program ensures that the Bank does not receive any investment advisory fees from the Funds as a result of the investment in the Funds by the Client Plans. Thus, the Fee Structure with the Rebate Program essentially has the same effect in offsetting the Bank's investment advisory fees received from the Funds as an arrangement allowing for a credit of such fees against investment management fees charged directly to the Client Plans. The Bank prefers the Fee Structure with the Rebate Program because it allows fees for fiduciary services charged at the Plan-level to remain fixed without any adjustments to such fees based on the investment advisory fees paid by the Funds to the Bank. The Bank notes that the Fee Structure also allows a Client Plan sponsor to pay the Client Plan's fees to the Bank for fiduciary services and still allows the Client Plan to receive a rebate of such Plan's pro rata share of the investment advisory fees paid by the Funds to the Bank.[15]

7. The Bank has established a system of internal accounting controls for the Rebate Program. In addition, the Bank has retained the services of Coopers & Lybrand of Boston, Massachusetts (the Auditor), an independent accounting firm, to audit annually the rebating of fees to the Client Plans under the Rebate Program. The Bank states that such audits provide independent verification of the proper rebating to the Client Plans of the investment advisory fees charged by the Bank to the Funds. The Bank states further that information obtained from the audits is used in the preparation of required financial disclosure reports to the Client Plans' fiduciaries.

By letter dated March 29, 1994, the Auditor describes the procedures that will be used in any annual audit of the Rebate Program. The Auditor obtains: (i) A calculation of the daily actual balances for all the Funds and for the total Client Plan shareholders of such Funds; (ii) a detailed list of the expenses charged to the Funds' shareholders by type of expense; and (iii) calculations of the total expenses charged by the Bank to each Fund which are reimbursable to the Client Plans. The Auditor states that every audit will include, but not necessarily be limited to, an examination of: (i) The daily rebate factors; (ii) the proper identification of Client Plan customers; (iii) the calculation of the ratio used to determine the amount of expenses to be rebated to each Client Plan; (iv) the total rebates paid and a comparison of this amount to the sum of all rebates paid to each Client Plan; [16] and (v) the amount of rebated fees determined for selected Client Plan customers of the Funds to ensure that the rebated amounts were made to the proper Client Plan account.

In the event either the internal audit by the Bank or the independent audit by the Auditor identifies that an error has been made in the rebating of fees to the Client Plans, the Bank will correct the error. With respect to any shortfall in rebated fees to a Client Plan, the Bank will make a cash payment to the Plan equal to the amount of the error with interest computed on the same yield as that paid by The 1784 Institutional U.S. Treasury Money Market Fund for the period involved. Any excess rebates made to a Client Plan will be corrected, to the extent possible, by an appropriate reduction of cash to the Client Plan during the next payment period to accurately reflect the proper amount of total rebates due to the Client Plan for the period involved.

8. With respect to the receipt of fees by the Bank from a Fund in connection with any Client Plan's investment in the Fund, the Bank states that a Second Fiduciary receives full and detailed written disclosure of information concerning the Fund in advance of any investment by the Client Plan in the Fund. On the basis of such information, the Second Fiduciary authorizes in writing the investment of assets of the Client Plan in the Fund and the fees to be paid by the Fund to the Bank. In addition, the Bank represents that the Second Fiduciary of each Client Plan invested in a particular Fund will receive full written disclosure, in a statement separate from the Fund prospectus, of any proposed increases in the rates of fees charged by the Bank to the Funds for secondary services, which are above the rate reflected in the prospectus for the Fund, at least 30 days prior to the effective date of such increase. In the event that the Bank provides an additional secondary service to a Fund for which a fee is charged or there is an increase in the amount of fees paid by the Funds to the Bank for any secondary services, resulting from a decrease in the number or kind of services performed by the Bank for such fees in connection with a previously authorized secondary service, the Bank will, at least thirty days in advance of the implementation of such additional service or fee increase, provide written notice to the Second Fiduciary explaining the nature and the amount of the additional service for which a fee will be charged or the nature and amount of the increase in fees of the affected Fund.[17] Such notice will be made separate from the Fund prospectus and will be accompanied by a Termination Form. The Second Fiduciary will also receive full written disclosure in a Fund prospectus or otherwise of any increases in the rate of fees charged by the Bank to the Funds for investment advisory services even though such fees will be credited, as required by Section I(d) above.

Any authorizations by a Second Fiduciary regarding the investment of a Client Plan's assets in a Fund and the fees to be paid to the Bank, including any future increases in rates of fees for secondary services, are or will be terminable at will by the Second Fiduciary, without penalty to the Client Plan, upon receipt by the Bank of written notice of termination. The Bank states that a Termination Form expressly providing an election to terminate the authorization with instructions on the use of the form is supplied to the Second Fiduciary no less than annually. The instructions for the Termination Form include the following information:

(a) The authorization is terminable at will by the Client Plan, without penalty to the Client Plan, upon receipt by the Bank of written notice from the Second Fiduciary; and

(b) Failure to return the form will result in continued authorization of the

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Plan assets in the Funds, has a fiduciary duty to monitor all fees paid by a Fund to the Bank, its affiliates, and third parties for services provided to the Fund to ensure that the totality of such fees is reasonable and would not involve the payment of any ''double'' fees for duplicative services to the Fund by such parties.

[15] To the extent that the Department of the Treasury determines that this arrangement should be deemed a contribution by an employer to a Client Plan of the rebated fees, the transaction must be examined under the applicable provisions of the Internal Revenue Code, including sections 401(a)(4), 404 and 415.

[16] In this regard, the Auditor recomputes cash received in connection with the rebate of each Client Plan's fees to ensure the proper amount of cash was issued to the Client Plan under the Rebate Program.

[17] With respect to increases in fees, the Department notes that an increase in the amount of a fee for an existing secondary service (other than through an increase in the value of the underlying assets in the Funds) or the imposition of a fee for a newly-established secondary service shall be considered an increase in the rate of such fees. However, in the event a secondary service fee has already been described in writing to the Second Fiduciary and the Second Fiduciary has provided authorization for the fee, and such fee was temporarily waived, no further action by the Bank would be required in order for the Bank to receive such fee at a later time. Thus, for example, no further disclosure would be necessary if the Bank had received authorization for a fee for custodial services from Plan investors and subsequently determined to waive the fee for a period of time in order to attract new investors but later charged the fee.

Bank to engage in the subject transactions on behalf of the Client Plan.

The Termination Form may be used to notify the Bank in writing to effect a termination by selling the shares of the Funds held by the Client Plan requesting such termination within one business day following receipt by the Bank of the form. The Bank states that if, due to circumstances beyond the control of the Bank, the sale cannot be executed within one business day, the Bank will complete the sale within the next business day.

Any disclosure of information regarding a proposed increase in the rate of any fees for secondary services will be accompanied by an additional Termination Form with instructions on the use of the form as described above. Therefore, the Second Fiduciary will have prior notice of the proposed increase and an opportunity to withdraw from the Funds in advance of the date the increase becomes effective. Although the Second Fiduciary will also have notice of any increase in the rates of fees charged by the Bank to the Funds for investment advisory services, through an updated prospectus or otherwise, such notice will not be accompanied by a Termination Form since all increases in investment advisory fees will be rebated by the Bank to the Client Plans and will be subject to an annual reauthorization as described above. However, if the Termination Form has been provided to the Second Fiduciary for the authorization of a fee increase, then a Termination Form for an annual reauthorization will not be provided by the Bank for that year unless at least six months has elapsed since the Termination Form was provided for the fee increase.

The Bank states that the Second Fiduciary always receives a current prospectus for each Fund and a written statement giving full disclosure of the Fee Structure prior to any investment in the Funds. The disclosure statement explains why the Bank believes that the investment of assets of the Client Plan in the Funds is appropriate. The disclosure statement also describes whether there are any limitations on the Bank with respect to which Client Plan assets may be invested in shares of the Funds and, if so, the nature of such limitations.[18]

The Bank states further that the Second Fiduciary receives an updated prospectus for each Fund at least annually and either annual or semi-annual financial reports for each Fund, which include information on the Auditor's findings as to the proper rebating of the investment advisory fees by the Bank to the Client Plan. The Bank also provides monthly reports to the Second Fiduciary of all transactions engaged in by the Client Plan, including purchases and sales of Fund shares.

9. No sales commissions are paid by the Client Plans in connection with the purchase or sale of shares of the Funds. In addition, no redemption fees are paid in connection with the sale of shares by the Client Plans to the Funds. As noted above in Paragraph 4, the Bank does not receive any fees payable pursuant to Rule 12b–1 under the 1940 Act in connection with the transactions. The applicant states further that all other dealings between the Client Plans and the Funds, the Bank or any affiliate, are on a basis no less favorable to the Client Plans than such dealings are with the other shareholders of the Funds.

10. In summary, the applicant represents that the transactions described herein satisfy the statutory criteria of section 408(a) of the Act and section 4975(c)(2) of the Code because: (a) The Funds provide the Client Plans with a more effective investment vehicle than collective investment funds maintained by the Bank without any increase in investment management, advisory or similar fees paid to the Bank; (b) the Bank requires annual audits by an independent accounting firm to verify the proper rebating to the Client Plans of investment advisory fees charged by the Bank to the Funds; (c) with respect to any investments in a Fund by the Client Plans and the payment of any fees by the Fund to the Bank, a Second Fiduciary receives full written disclosure of information concerning the Fund, including a current prospectus and a statement describing the Fee Structure, and authorizes in writing the investment of the Client Plan's assets in the Fund and the fees paid by the Fund to the Bank; (d) any authorizations made by a Client Plan regarding investments in a Fund and fees paid to the Bank, or any increases in the rates of fees for secondary services which are retained by the Bank, are or will be terminable at will by the Client Plan, without penalty to the Client Plan, upon receipt by the Bank of written notice of termination from the Second Fiduciary; (e) no commissions or redemption fees are paid by the Client Plan in connection with either the acquisition of Fund shares or the sale of Fund shares; (f) the Bank does not receive any fees payable pursuant to Rule 12b–1 under the 1940 Act in connection with the transactions; and (g) all dealings between the Client Plans, the Funds and the Bank, are on a basis which is at least as favorable to the Client Plans as such dealings are with other shareholders of the Funds.

Notice to Interested Persons

Notice of the proposed exemption shall be given to all Second Fiduciaries of Client Plans that are currently invested in the Funds, as of the date the notice of the proposed exemption is published in the **Federal Register**, where the Bank provides services to the Funds and receives fees which would be covered by the exemption, if granted. Notice to interested persons shall be provided by first class mail within fifteen (15) days following the publication of the proposed exemption in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and a supplemental statement (see 29 CFR 2570.43(b)(2)) which informs all interested persons of their right to comment on and/or request a hearing with respect to the proposed exemption. Comments and requests for a public hearing are due within forty-five (45) days following the publication of the proposed exemption in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Mr. E. F. Williams of the Department, telephone (202) 219–8194. (This is not a toll-free number.)

Amended Profit Sharing Plan and Trust of Walker Products Co., Inc. (the P/S Plan)

Located in Lincoln, Kansas
[App. No. D–09798]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 C.F.R. Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990.) If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed sale of certain farm land (the Land) by the

[18] See section II(d) of PTE 77–4 which requires, in pertinent part, that an independent plan fiduciary receive a current prospectus issued by the investment company and a full and detailed written disclosure of the investment advisory and other fees charged to or paid by the plan and the investment company, including a discussion of whether there are any limitations on the fiduciary/investment adviser with respect to which plan assets may be invested in shares of the investment company and, if so, the nature of such limitations.

P/S Plan to Mr. Lloyd Walker, a 33⅓% shareholder of the P/S Plan sponsor and a party in interest with respect to the P/S Plan, provided that the following conditions are satisfied:

(1) The proposed sale will be a one-time cash transaction;

(2) The P/S Plan will receive the fair market value of the Land as determined at the time of the sale by an independent, qualified appraiser; and

(3) The P/S Plan will pay no expenses associated with the sale.

Summary of Facts and Representations

1. The Plan, established in May, 1974, is a profit sharing plan, which currently has two participants. As of September 1, 1994, the P/S Plan had $101,468 in total assets. The P/S Plan's trustees are Albert Walker, Craig Walker and Joyce Walker (the P/S Plan Trustees). Craig Walker is the president of Walker Products Company Inc. (the Employer). Lloyd Walker is a 33⅓% shareholder of the Employer. However, Lloyd Walker has retired from the Employer on December 31, 1982, and received distributions from the P/S Plan on February 28, 1983. The Employer is a Subchapter ''C'' Kansas corporation which is in the farming business. The applicant represents that until approximately August, 1985, the Employer maintained two plans (collectively; the Plans), the P/S Plan and the Money Purchase Plan (M/P Plan). The M/P Plan was terminated in August, 1985, and its assets were rolled over into the P/S Plan approximately May, 1986.

2. On May 5, 1975, the M/P Plan purchased the 79.6 acre tract of Land for $57,000 in cash from Edward Hamilton, the executor of the Estate of Marie Jensen, neither of which had any relationship to the Plans, Lloyd Walker, or the Employer. At the time that the Land was purchased it represented 78.95% of the M/P Plan's assets. It is represented that the original decision to purchase the Land was made by the M/P Plan Trustees who deemed it a safe investment which could produce income from farming operations and a reasonable rate of return. The Land was held by the M/P Plan from the date of original acquisition until approximately May, 1986, when the M/P Plan's assets, including the Land, were transferred into the P/S Plan.

3. The Land is currently encumbered with a first mortgage which was entered into on August 31, 1994, in the principal amount of $30,000. The applicant represents that the P/S Plan Trustees borrowed the money (the Loan) in order to pay out distributions. The Loan was made by Farmers National Bank, which is unrelated to the P/S Plan and the Employer. The P/S Plan Trustees intend to pay off the Loan with the proceeds from the proposed sale.

4. It is represented that since its original acquisition, the Land has been rented or operated.[19] Since April, 1985 and currently, the Land has been rented on a crop share basis to Lowell Vonada (Mr. Vonada), an unrelated third party. Under this arrangement, Mr. Vonada as the tenant receives 60% of the crops and the P/S Plan receives 40% of the crops. It is also represented that currently there are no crops growing on the Land.

5. Lloyd Walker now desires to purchase the Land from the P/S Plan in a one-time cash purchase. The Land was appraised (the Appraisal) on October 18, 1994, by Frank L. Princ (Mr. Princ), an independent Kansas State Certified General R.E. appraiser. Mr. Princ stated that the purpose of the Appraisal is to estimate the market value of the Land on an ''as is'' basis. The Land, located in Lincoln County, Kansas, contains approximately 82 acres,[20] of which 76.2 acres are in cultivation, and the remaining acres are primarily woodland and waste. In determining the fair market value of the Land, Mr. Princ utilized the sales comparison approach and the income approach, but relied mainly on the sales approach as the primary basis for the value estimate of the Land. Accordingly, as of October 18, 1994, Mr. Princ determined the fair market value of the Land to be $64,000.

6. The applicant maintains that the Land has yielded revenue for the Plans. The applicant submitted a ''return on investment'' analysis (the Analysis) on the Land, covering the period 1976 through 1994. Return on investment value ratios were derived by the applicant by dividing the estimated net income by the original acquisition price of the Land for each year of ownership.[21] An average of the ''return on investment'' figures was determined to be 6.98%. Therefore, according to the Analysis, the Plans received an average yield of 6.98% for their investment in the Land.

7. The applicant represents that the transaction is administratively feasible, in the interest and protective of the P/S Plan. Lloyd Walker will purchase the Land at its fair market value in a one-time cash transaction. The transaction is protective and in the best interest of the P/S Plan because as a result of this transaction the P/S Plan will receive the fair market value of the Land as determined at the time of the sale by an independent, qualified appraiser. The transaction would also be in the interest of the P/S Plan because it will enable the P/S Plan to sell an illiquid asset which currently represents in excess of 50% of the P/S Plan's total assets and which had little appreciation in value over time.[22] The sale will enable the P/S Plan Trustees to pay off the Loan and to acquire investments with a higher yield. The applicant also represents that the P/S Plan will incur no expenses as a result of the transaction described herein.

8. In summary, the applicant represents that the transaction satisfies the statutory criteria of section 408(a) of the Act and section 4975(c)(2) of the Code because:

(1) The proposed sale will be a one-time cash transaction;

(2) The P/S Plan will receive the fair market value of the Land as determined at the time of the sale by an independent, qualified appraiser; and

(3) The P/S Plan will pay no expenses associated with the sale.

FOR FURTHER INFORMATION CONTACT: Ekaterina A. Uzlyan of the Department, telephone (202) 219–8883. (This is not a toll-free number.)

Delaware Trust Capital Management, Inc. (DTCM)

Located in Wilmington, Delaware
[App. No. D–09853]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed sale by certain rollover individual retirement accounts (the

[19] With regard to the Land being operated, the applicant represents that for a short period of time the employees of the Employer (the Employees) were paid to provide farming services. However, the applicant represents that the Employees were not compensated for these farming services by either of the Plans. It is further represented that no renter, at any time, has been a party in interest with respect to the Plans.

[20] The applicant represents that 82 acres shown by Mr. Princ probably come from the Lincoln County Appraiser's office. The applicant also maintains that their reference to the Land as containing 79.6 acres is based on the number of tillable acres on the Land.

[21] With respect to the Analysis, the applicant represents that with respect to the period 1986 through 1994, the data was estimated to reflect pro rata income and expenses for the Land, excluding any unrealized gain due to the change in fair market value of the Land.

[22] The Department expresses no opinion as to whether the Plan's acquisition and holding of the Land, as well as the operation of the Land by the Employees, violated any provision of part 4 of Title I of the Act, and no relief is provided herein.

IRAs) of their interests in certain securities (the Securities) to DTCM, a disqualified person with respect to the IRAs, provided the following conditions are satisfied: (1) The sale is a one-time transaction for cash; (2) no commissions or other expenses are paid by the IRAs in connection with the sale; (3) the IRAs receive the greater of: (a) the fair market value of the Securities as of June 30, 1994, plus accrued interest, less principal repayments received, or (b) the fair market value of the Securities as of the time of the sale as determined by a qualified, independent expert.[23]

Summary of Facts and Representations

1. DTCM is a Delaware corporation which is engaged in the business of providing trust and other fiduciary services to individuals, businesses and non-profit entities, including employee pension plans and individual retirement accounts.

2. DTCM was the trustee of the USA Training Academy, Inc. Profit Sharing Plan (the Plan), and is the trustee of the IRAs, which are rollover individual retirement accounts for five former participants (the Affected Participants) in the Plan. DTCM (and its parent company, Delaware Trust Company) have served as trustee of the Plan and the IRAs from November 1, 1984 until the present. The applicant is a wholly owned subsidiary of Delaware Trust Company, which in turn is a wholly owned subsidiary of Meridian Bancorp, Inc.

3. In 1994, the Plan's Administrator advised the applicant, DTCM, that the Plan's sponsor intended to terminate the Plan and, in that connection, would be instructing DTCM to liquidate the Plan assets and make distributions to the remaining Plan participants. In response, DTCM informed the Plan Administrator that there was no readily discernible market for the Securities. The Securities included the following two obligations:

(a) SEARS ROEBUCK & CO MTG SEC PAR CTF (the Sears Securities), which are mortgage-backed obligations issued by the Sears Mortgage Securities Corp. These Securities pay 10.36% in interest and mature July 25, 2018. The Plan acquired a participating certificate for 198,992 units of these obligations in July, 1988 for $196,200 (unit cost=$0.99). The Plan has received all scheduled payments of principal and interest.

(b) AMERICAN SVNGS & LOAN ASSN BRAZOR CNTY PART CTF (the American Securities), which are mortgage-backed obligations issued by American Savings and Loan Association of Brazoria County, Texas. Each loan is a guaranteed FHA Title I loan. These Securities pay 9.5% in interest and mature January 9, 2002. The Plan acquired 198,161.88 units in April, 1987 at a unit cost of $1 per unit. The Plan has received all scheduled payments of principal and interest.

4. DTCM determined that as of June 30, 1994, the Sears Securities had a fair market value of $24,163.78. This fair market value was established by Sears' mortgage subsidiary, a brokerage house providing master servicing for Sears' mortgage pass-through certificates which is a sister subsidiary to Sears Mortgage Securities Corp., the issuer of the Sears Securities. DTCM also determined that as of June 30, 1994, the American Securities had a fair market value of $49,416.80. The applicant represents that this fair market value was established by A.W. Dougherty, an unrelated brokerage house specializing in fixed- income securities.

5. DTCM, the Plan sponsor, the Plan and the Affected Participants entered into an agreement (the Agreement) in 1994 that provided for the orderly liquidation of the Plan without the delay that would have been caused by attempting to convert the Securities to cash. Following the execution of the Agreement on August 30, 1994, the applicant liquidated the Plan assets (excluding the Securities). The Plan Administrator then determined the value of each participant's account based upon the cash proceeds of liquidation and the fair market value of the Securities as of June 30, 1994 (see rep. 4, above).[24] The Affected Participants received pro rata shares of (i) the cash proceeds of the liquidation of the Plan's assets and (ii) the Securities. The value of each Affected Participant's account was distributed to the IRAs, individual retirement rollover accounts established by DTCM on behalf of the Affected Participants and for which DTCM serves as trustee. The IRAs currently hold a total of 14,628.32 units of the Sears Securities and 41,501.40 units of the American Securities.

6. The applicant has requested an exemption to permit DTCM to purchase the Securities from the IRAs. DTCM will pay the greater of (i) the fair market value as of June 30, 1994, increased by any interest payments in arrears as of the date of purchase by the applicant, and reduced proportionately for any principal repayments received, or (ii) the fair market value of the Securities as of the date of the sale as determined by a qualified, independent expert. The IRAs will pay no fees, commissions or other expenses in connection with the transaction. The applicant represents that the Securities have been determined by Ms. Janet Milanese, Vice President of Starboard Capital Markets, Inc., an independent expert in Philadelphia, Pa., as having a fair market value as of January 31, 1995 which is less per unit than the June 30, 1994 figure determined as described in rep. 4, above. Accordingly, DTCM proposes to pay to the IRAs the June 30, 1994 fair market value of the Securities, plus any interest payments in arrears as of the date of the transaction, less any principal repayments received.

7. The applicant represents that the Plan entered into the Agreement because it allowed for the orderly liquidation of its assets and distribution of benefits while at the same time protecting the Affected Participants because they would receive at least as much as they would have if the Plan had been able to sell the Securities in an arm's-length transaction on the date of the Plan's liquidation. The proposed transaction also benefits the IRAs since it allows the Securities to be converted to cash prior to maturity at a price at least as great as could be obtained in an arm's-length transaction.

8. In summary, the applicant represents that the proposed transaction satisfies the criteria contained in section 4975 (c)(2) of the Code because: (a) The sale is a one-time transaction for cash; (b) no commissions or other expenses will be paid by the IRAs in connection with the sale; (c) the IRAs will be receiving not less than the fair market value of the Securities as determined by a qualified, independent expert; and (d) each of the Affected Participants is the only participant in his/her own IRA, and each has determined that the proposed transaction is appropriate for and in the best interest of his/her IRA and desires that the transaction be consummated.

NOTICE TO INTERESTED PERSONS: Because each of the Affected Participants is the only participant in his/her own IRA, it has been determined that there is no need to distribute the notice of proposed exemption to interested persons. Comments and requests for a hearing are due 30 days after publication of this notice in the **Ferderal Register**.

[23] Pursuant to 29 CFR 2510.3–2(d), the IRAs are not within the jurisdiction of Title I of the Act. However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

[24] The applicant represents that, based on the valuation methods described in rep. 4, the fair market value of the Securities on June 30, 1994, was at least as great as the fair market value of the Securities on August 31, 1994, the date liquidation of the Plan commenced.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest of disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 15th day of March, 1995.

Ivan Strasfeld,

Director of Exemption Determinations Pension and Welfare BenefitsAdministration, U.S. Department of Labor.

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NATIONAL CREDIT UNION ADMINISTRATION

Guidelines for the Supervisory Review Committee

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final Interpretive Ruling and Policy Statement 95–1—Supervisory Review Committee (IRPS 95–1).

SUMMARY: The Riegle Community Development and Regulatory Improvement of Act (Act) of 1994 was signed into law on September 23, 1994. Section 309 of the Act requires that NCUA establish an independent appellate process to review material supervisory determinations. This process must be established within 180 days of the Act's passage or by March 22, 1995. The Act also requires that the public be entitled to comment on the proposed process. The NCUA Board issued proposed IRPS 94–2 on November 10, 1994. The proposed IRPS would have established a Supervisory Review Committee (Committee) consisting of five senior staff members to hear appeals of material supervisory determinations. Material supervisory determinations were defined in the proposal to include composite CAMEL ratings of 4 and 5, significant loan classifications and adequacy of loan loss reserves. The Board has expanded the determinations subject to review in the final IRPS to include composite CAMEL ratings of 3, 4 and 5 and all component ratings of those composite ratings. The final IRPS reduces Committee membership from five to three and shortens the time-frames for Committee action. Additional procedural and technical changes are made in the final IRPS as described in the Supplementary Information.

EFFECTIVE DATE: March 22, 1995.

ADDRESSES: National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428.

FOR FURTHER INFORMATION CONTACT: Hattie M. Ulan, Special Counsel to the General Counsel, at the above address or telephone 703–518–6540.

SUPPLEMENTARY INFORMATION:

Background

The Riegle Community Development and Regulatory Improvement Act of 1994, Public Law 103–325 (the Act) was signed into law on September 23, 1994. Section 309 of the Act requires, among other things, that NCUA and the federal banking agencies each establish an independent appellate process to review material supervisory determinations. The Act requires that the agencies provide the public with notice and opportunity to comment on the proposed guidelines for the appellate process within 90 days of the Act's passage. The NCUA Board issued proposed guidelines establishing a Supervisory Review Committee (Committee) (Interpretive Ruling and Policy Statement (IRPS) 94–2) on November 10, 1994 (59 FR 59437, 11/17/94.) The guidelines were issued with a 30-day comment period ending on December 19, 1994. The NCUA Board then extended the comment period until January 18, 1995. (See 59 FR 61003, 11/29/94.) The Act requires that each agency's appellate process be established not later than 180 days after the Act's passage (by March 22, 1995).

Forty-nine commenters responded to the proposed guidelines. The public commenters consisted of 26 federally chartered credit unions, 7 state chartered, federally-insured credit unions and 1 unidentified credit union, 8 state credit union leagues, 1 state credit union regulator, 3 national trade associations, 2 individual auditors and one credit union manager. The commenters generally approved of the proposed Supervisory Review Committee, however, there were several areas where many of the commenters suggested changes. The Board has considered the public comments and suggestions of NCUA staff as well as the proposed guidelines of the federal banking agencies (Federal Deposit Insurance Corporation, Office of Thrift Supervision, Office of Comptroller of the Currency, and Federal Reserve Board) in devising its final guidelines. An explanation of the comments received and the resolution of the issues in the final IRPS follows.

Format—IRPS or Regulation

The Board specifically requested comment on whether an IRPS was the appropriate method to establish the appeals process or whether the process should be established through a regulation. Sixteen commenters addressed this issue and the response was split 50/50. Several of the commenters supporting use of a regulation believe it would have greater force of law. The Board believes that the IRPS format is more appropriate since it provides the Board with some flexibility. The Board does not believe enforceability of the IRPS will be a problem since notice and comment requirements of the Administrative Procedure Act have been followed in its promulgation.